IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10578 of 1995

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DALPATBHAI RANCHHODBHAI BARIYA - Petitioner(s)

Versus

DECEASED KALUSINH MADHAVSINH PARAKHIYA & 2 - Respondent(s)

==========

Appearance :

MR JAYESH M PATEL for Petitioner
MR CC BHALJA for Respondent: 1,
MR AD OZA, Government Pleader for Respondent : 3.

==========

CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 05/09/2005

ORAL JUDGMENT

1.By way of this petition under Article 227 of the Constitution of India, the petitioner challenges the order dated 26th October 1988 passed by the Additional

Mamlatdar & Agriculture Land Tribunal, Vaghodia (Annexure “B”); the order dated 24th April 1989 passed by the Assistant Collector, Dabhoi (Annexure “C”) and the order dated 30th October 1995 passed by the Gujarat Revenue Tribunal (Annexure “D”).

2. The facts of the case, as stated in the petition, are that the subject lands being land bearing survey No.496/1 of Village Gamod, Taluka Tilakvada, Dist. Vadodara, admeasuring Hectares 0-31-36 were originally running in the name of one Ganpatsinh Madhavsinh Parakhia as Vahivatkarta of a Hindu Undivided Family, of which he was the eldest member of the family. That, the respondent No.1 – Kalusinh Madhavsinh Parakhia was a member of the said Hindu Undivided Family. It is the case of the petitioner that the respondent No.1 had executed an agreement to sell the subject lands in favour of the petitioner on 9th May, 1972 for a consideration of Rs.2,700/-, and that, upon payment of earnest money by the petitioner, the possession of the disputed land was handed over to him, and that, since then the petitioner is in actual possession of the said property.

3.It is the further case of the petitioner that, after lapse of many years, vide a show cause notice dated 13th March, 1987, the Mamlatdar & ALT, Vaghodia had initiated proceedings under Section 84C of the Tenancy Act, for breach of the provisions of Section 43 of the Bombay Tenancy & Agriculture Lands, 1948 (the Act).

4.By the impugned order dated 26th October, 1988, the Additional Mamlatdar & ALT, Vaghodia held that the possession of the land by the petitioner on the basis of oral mortgage was in breach of the provisions of the Tenancy Act and was, therefore, liable to be held to be invalid under the provisions of sub-section (2) of Section 84C of the Act. However, keeping in view the provisions of sub-section (2) of Section 84C, the Additional Mamlatdar & ALT thought it fit to allow the parties to restore the land to the position in which it was immediately before the transfer within a period of 90 days from the date of the order, failing which the transfer would be deemed to have been declared invalid under the provisions of Section 84C(2) and would accordingly vest in the State Government free from all encumbrances under Section 84(3), and upon expiry of the said period, the Mamlatdar, Tilakvada would be

required to initiate proceedings for disposal of the said lands under Section 84C(4).

5. The petitioner challenged the aforesaid order of the Additional Mamlatdar & ALT before the Assistant Collector, Dabhoi by way of an appeal under the provisions of Section 74 of the Act. The Assistant Collector, Dabhoi, for the reasons stated in the impugned order dated 24th April, 1989, dismissed the appeal and upheld the order of the Mamlatdar & ALT.

6. The petitioner carried the matter in revision before the Gujarat Revenue Tribunal. The Tribunal vide its order dated 30th October, 1995, upheld the orders of the lower authorities and rejected the revision application.

7. Being aggrieved by the aforesaid orders, the petitioner has filed the present petition.

8. Heard Mr.Jayesh M.Patel, the learned advocate for the petitioner, Mr.C.C.Bhalja, the learned advocate on behalf of the respondent no.1 and Mr.A.D.Oza, the learned Government Pleader on behalf of the respondent

No.3. Despite service, there is no appearance on behalf of the respondent No.2.

9. Mr.Patel for the petitioner has contended that the agreement to sell (Annexure “A”) has been executed on 9th May, 1972, and that, subsequently, the name of the petitioner has been entered into the village form No.7/12 since 1973-74. That, the proceedings under section 84C of the Act have been initiated by a show cause notice dated 13th March, 1987, after a delay of almost 15 years, hence, the proceedings are barred by limitation. In support of the said contention, the learned advocate has relied upon a decision of the Supreme Court in the case of Mohammad Kavi Mohammad Amin v. Fatmabai Ibrahim, reported in 1997 (6) SCC 71, wherein the transfer took place in the year 1972 and *suo motu* enquiry was started by the Mamlatdar in September 1973, the Supreme Court held that the *suo motu* power under Section 84C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, it was submitted that the impugned orders should be set aside on this ground alone.

10. It was also contended that the provisions of Section

43(1) of the Act are not applicable to the facts of the present case since the agreement to sell was entered into on 9th May, 1972, whereas Section 43(1) was amended by Gujarat Act 30 of 1977. The learned advocate relied upon a decision of this Court in case of Patel Chhotabhai Shankerbhai v. Patel Shantabhai Narshibhai, reported in [1975] 16 GLR 247 for the proposition that prior to the amendment of sub-section (1) of section 43, there was no requirement under the statute for obtaining the sanction of the Collector in respect of an agreement of sale. The learned advocate also relied upon a decision of this Court in the case of Punabhai Dhedhubhai Baraiya v. Patel Chhaganbhai Parshotamdas, reported in [1983] 2 GLR 1165, wherein it has been held that, while the legislature amended Section 43 sub-section (1) by Gujarat Act No.30 of 1977, it did not think it fit to amend it retrospectively. That, such an amendment which affected substantive rights of parties has to be treated as prospective unless it is made expressly or by necessary implication retrospective by the legislature. It was held that sweep of section 43(1) as amended in 1977 cannot retrospectively invalidate written agreements to transfer agricultural lands by way of sale, gift,

exchange, mortgage, assignment, etc., which when executed, were not hit by the then existing provisions of Section 43(1). The learned advocate has further pointed out that the contention recorded in the order of the Tribunal that the subject lands form a fragment under the fragmentation Act and hence, the same could not be sold, is a new fact emerging from the order of the Tribunal, and that the petitioner had no occasion to deal with the same.

11.The learned advocate has further contended that the Tribunal has not assigned any reasons for rejecting the revision application and has merely upheld the orders of the Mamlatdar & ALT and the Assistant Collector. The learned advocate relied upon a decision of the Supreme Court in case of The Siemens Engineering & Manufacturing Co. of India Ltd. v. The Union of India, reported in AIR 1976 SC 1785, wherein it has been held that it is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. The Supreme Court further held that, “If Courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of

cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

12. In conclusion, the learned advocate submitted that the impugned orders are required to be quashed and set aside or in the alternative, considering the fact that the Tribunal has not passed a reasoned order, the matter be remanded to the Tribunal for deciding the same afresh, on merits, after considering the

contentions raised on behalf of the parties.

13.Mr.C.C.Bhalla appearing on behalf of the respondent No.2 has no objection if the alternative submission of the petitioner is accepted.

14.Mr.A.D.Oza, the learned Government Pleader has supported the orders passed by the authorities.

15.Upon perusal of the impugned orders, it is apparent that the order passed by the Additional Mamlatdar & ALT has been passed without hearing the petitioner. It appears that several opportunities of hearing were granted to the petitioner, but the petitioner, on account of ill-health, could not remain present, and ultimately, the matter was decided exparte.

16.Before the Assistant Collector, the petitioner had raised various contentions, including the contention that the agreement to sell in the present case had been executed in 1972, whereas the amendment in the Tenancy Act had come into force in 1977, hence, the said amendment would not be applicable to the transaction in question. However, the said contention which goes to

the root of the matter, has not been dealt with by the Assistant Collector.

17. As can be seen from the impugned order of the Tribunal, the Tribunal has merely upheld the orders of the lower authorities, without considering any of the submissions made on behalf of the parties. The Tribunal being a final fact finding authority is expected to apply its mind and render its findings on the issues raised in the matter.

18. In the circumstances, without entering into the merits of the matter, it appears just and proper to accept the alternative prayer made on behalf of the petitioner, namely, to remand the matter to the Tribunal for deciding the same on merits after hearing the respective parties.

19. Accordingly, the impugned order dated 30th October, 1995 passed by the Tribunal is quashed and set aside, and the matter is remanded to the Tribunal to decide the same afresh. The Tribunal shall examine the matter on merits after affording an opportunity of hearing to the respective parties and considering the contentions

raised by them, and shall pass a reasoned order thereon.

20.The petition is, accordingly, allowed to the aforesaid extent. There shall be no order as to costs.

[HARSHA DEVANI, J.]

parmar*